

REMARKS

Claims 1, 3, and 4 are pending in the application. The Examiner has rejected claims 1 and 4 as lacking novelty over Heider; and has rejected claim 3 as obvious in view of Heider. The Heider reference is directed to a plastic container with multilayer label applied by in-mold labeling. The plastic container of the Heider reference incorporates a label introduced to the container during conventional blow molding process. The process involves introducing a label suitably held against a surface of the cavity of a hollow mold by, for example, vacuum, and wherein the hollow preform or parison is expanded or blown outwardly against the confines of the mold so that the label is bonded to the outer surface of the side wall of the resultant container. The label comprises an inner non-cellular plastic layer, an intermediate cellular plastic layer, and an outer non-cellular plastic layer. The outer surface of the outer layer is formed with suitable indicia such as printing to produce identification as well as desired aesthetic effects.

The resultant label preferably has a thin inner layer, a relatively thick intermediate layer and a thin outer layer. If the inner and outer layers are made of the same material, they should have substantially the same thickness. The layers need not be of the same polymeric composition. The preferred material for both the cellular layer and the non-cellular layers is polyethylene which includes low density polyethylene, high density polyethylene, medium density polyethylene and blends thereof.

The structure of the Heider reference is different from the structure of the instant claims. First, the structure of the Heider reference is a label that overlays the wall of the

plastic container. Thus, the description of the relative thicknesses of the layers of the label does not equate to the relative thicknesses of the wall structure itself. Accordingly, reliance on the Heider reference representing that certain layers are of the same thickness for the label is misplaced as the label is not the same as Applicants' claim to a wall structure having two solid layers of plastic of about the same thickness surrounding a foamed plastic layer.

The Heider reference fails to teach or suggest that the foamed layer must comprise a mixture of a first rigid polymer component and a second ductile polymer component and the outer, solid layers must be the same as the rigid polymer component of the foamed intermediate layer. This is an affirmative limitation of the claim for which there must shown to be some teaching, suggestion, or motivation within the cited reference. No such showing has been made. Indeed, Heider teaches away from such a combination.

Specifically, at col. 3, lines 33-45, Heider states that

The inner layer is preferably of a material which has a melting point like that of the container. The outer layer preferably is made of material that has the desired characteristics for printing and background. Thus, the inner layer may comprise a low density plastic such as low density polyethylene and the outer layer may comprise a more rigid plastic such as high density polyethylene or high density polystyrene which have a smooth or make [sic] finish.

Heider thus teaches that the solid layers of the label (i.e., inner and outer) are preferably made of different materials, one of a low density plastic and one of a more rigid plastic.

Further, the Heider reference contains no teaching or suggestion that the foamed intermediate layer must be a mixture of a first, rigid polymer component and a second ductile polymer component and that the outer, solid layers must be formed of the same material as said rigid polymer component of the foamed intermediate layer. The selection of these materials for the various components is an affirmative limitation of the claim. The Heider reference contains no teaching or suggestion for such relative combination of materials. The rejection improperly asserts that the mere recitation of the various types of polyethylene as potential components is the same as Applicants' affirmative assertion that the wall structure must comprise a specific relative selection of those components. That is, the mere recitation that the various types of polyethylene can be used in the various layers of the label does not anticipate the specific selection of particular types of polyethylene for each of the respective layers of the claimed wall structure. The rejection based upon lack of novelty in view of Heider is improper and should be withdrawn.

Likewise, with regard to claim 4, the lack of novelty rejection is improper and should be withdrawn. The rejection asserts that Heider states that the inner and outer layers should have substantially the same thickness. However, Applicants' claim explicitly recites that the wall structure of the bottle is such that the solid layers surrounding the intermediate foamed layer of the wall structure are of the same thickness. That is not the same as a label having inner and outer layers of about the same thickness that is applied to a wall structure. Accordingly, the Heider reference does not contain all the claimed

limitations, and the rejection is thus improper. Applicants request reconsideration and withdrawal of the rejection.

For substantially the same reasons as those recited above, the rejection of claim 3 as obvious in view of Heider is likewise misplaced, and should be withdrawn.

In view of the foregoing Remarks, it is respectfully submitted that the pending claims are in condition for allowance. Applicants respectfully request formal notification to that effect. If, however, the Examiner perceives any remaining impediments to such a notice of allowability, the Examiner is encouraged to contact Applicant's attorney at the number provided below. It is respectfully submitted that such informal communication will expedite examination and disposal of the instant case.

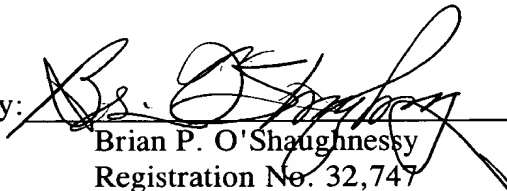
Respectfully submitted,

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Date:

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